IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 944 of 2001
with
CIVIL APPLICATION NO 10063 of 2001
In
SPECIAL CIVIL APPLICATION No. 6051 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MD SHAH AND HITEN RASHMIKANT GARDI HIGHER SECONDARY HIGH - Appellants

Versus

LASUBEN NARANBHAI RABARI - Defendant(s)

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Appearance :
MR HS MUNSHAW for Appellant(s) : 1,
MR UM SHASTRI for Defendant(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 07/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1.The respondent – lady Lasuben Naranbhai Rabari filed Recovery Application No.152 of 1994 before the Labour

Court, Surendranagar u/s.33(c)(2) of the Industrial Disputes Act (for short “the Act”), wherein she has stated that she was working with the School as Peon since 1.12.1988 for which she was paid only Rs.100/- pm. Minimum Wages Act applies to the school as well. But, instead of paying Minimum Wages to her she was paid only Rs.100/- pm and later on she was illegally dismissed from service. Thus, she claimed difference in salary between 1.12.1988 to 30.6.1994 before the Labour Court, Surendranagar. Notice of that Recovery Application was duly served upon the Appellant – School. Though Reply Ex.6 was filed by the appellant School, for about 3-1/2 years they miserably failed to remain present before the Labour Court. Therefore, by order passed below Ex.12 their right to lead evidence was closed. The respondent was examined before the Labour Court and after considering her evidence the Labour Court allowed her Application and ordered to pay Rs.50,250/- as difference in the salary of the respondent – workman towards Minimum Wages within 30 days from the date of receipt of the order. Rs.250/- was awarded by way of cost to the respondent. This order dated 25.8.2000 passed by the Labour Court was duly served upon the appellant – School on 31.8.2000.

For setting aside the ex-parte order Application was required to be filed within one month before the Labour Court, but that application was also not filed within time. Later on, after expiry of period of limitation Miscellaneous Application No.27 of 2000 was filed before the Labour Court for setting aside the ex-parte order passed by the Labour Court without filing separate application for condonation of delay. On that Application Notice was issued to the respondent – workman and after considering her reply the Labour Court dismissed that Miscellaneous Application for quashing and setting aside the ex-parte order. Aggrieved of the same the appellant – School approached this Court by way of writ petition i.e. Special Civil application No.6051 of 2001 under Art. 226 & 227 of the Constitution of India and prayed that both the impugned orders dated 25.8.2000 as well as 16.4.2001, passed by the Labour Court be quashed and set aside. Learned Single Judge of this Court (Ravi R. Tripathi, J.) by his order dated 30.7.2001 dismissed the said petition by observing that in spite of several opportunities given to the petitioners they did not bother to remain present before the Labour Court. Therefore, the Labour court has no alternative but to close the evidence and

pass the order on Recovery Application. Even in Miscellaneous Application not a word was mentioned as to why they failed to remain present before the Labour Court. In view of this, the learned Single Judge was of the opinion that the appellants were absolutely negligent in not remaining present before the Labour Court in Recovery Application. Therefore, he refused to exercise his discretionary jurisdiction in favour of the appellant – petitioner. This is challenged in this Appeal.

2. Shri Barot for the appellant submitted that though they have not remained present before the Labour Court in Recovery Application, reply Ex.6 to the Recovery Application was filed by them, wherein it was specifically stated that she was working hardly for half an hour and that too for a few days in a year. This was not considered by the Labour Court. It is true that such reply was filed but no evidence was led by the appellant – School before the Labour Court to that effect. The respondent lady was examined before the Labour Court and in her evidence she has specifically stated that she was working eight hours a day, and not in a month and she was not paid the salary in accordance with Rules. In that view of the matter the

Labour Court allowed that Recovery Application then there is no question of interference. The appellant was very much negligent, that even after receipt of the ex-parte order passed by the Labour Court they did not move the Application for setting aside the ex-parte order within a period of limitation. There was a delay even in filing such Application and without filing separate Application for condonation of delay they prayed for setting aside the ex-parte order. On facts, the learned Judge rejected that Application on the ground that no case was made out for setting aside the ex-parte award and for nearly 3-1/2 years the applicant constantly failed to remain present before the Labour court in Recovery Application. When the Labour Court refused to set aside ex-parte Award and the learned Single Judge of this Court also refused to interfere with such order in exercise of his discretionary writ jurisdiction then this Court in LPA will not interfere with such order.

3. In view of the above discussion, this Appeal fails and is hereby dismissed.

4. As the main Appeal is dismissed, Civil Application No. 10063 of 1005 (for stay) has to be dismissed and accordingly it is dismissed. Interim relief, granted

earlier, stands vacated. The amount of rs.25,000/- deposited by the appellant will have to be paid to the respondent by A/c. Payee cheque. Rest of the amount to be paid by the appellant to the respondent as early as possible and not later than 31.12.2005 by way of A/c. Payee Cheque.

(B.J.SHETHNA,J.)

(M.C.PATEL, J.)

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